DEFINITIONS:

- A Procurement (term is synonymous with "Acquisition")
 - 1. Principal purpose is acquisition by purchase, lease or barter of property or services for the direct benefit of the Federal Government.
 - 2. Rules are found in the Federal Acquisition Regulations (FAR)
 - 3. Cornerstone of Procurement is competition.
 - 4. Many procedures can be used:
 - Micropurchasing (under \$2,500).
 - Simplified Acquisition (\$2,501 to \$100,000). FAR Subpart 13
 - Commercial Items (simplified acquisition procedures up to \$5,000,000). FAR Subpart 12
 - Invitation for Bids (IFB). FAR Subpart 14
 - Negotiation. FAR Subpart 15
 - 5. Buyer/Seller relationship. In procurement, the basic arms-length buyer-seller relationship is expressed in a formal manner, with the rights and duties of the Government and the vendor explicitly detailed. The Government, as a purchaser, exercises its right to control or direct the work through specifications, changes, or inspection and acceptance procedures. The Government can terminate for its convenience and, where appropriate, for default. In instances where the vendor does not satisfactorily perform as directed in the specifications or scope of work, the Government can withhold payment until it receives satisfactory performance or delivery.

B. Assistance

- 1. Principal purpose is the transfer of money, property, services or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. This is an action where the primary benefit accrues to the recipient of the assistance.
- 2. Rules are found in OMB Circulars and CFR 43 part 12
- 3. Use grants and cooperative agreements.

- GRANT: The principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by law of the United States instead of acquiring by purchase, lease, or barter property or services for the direct benefit or use of the United States Government; and substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.
- COOPERATIVE AGREEMENT: Same definition as grant except that substantial Federal involvement is expected. Anticipated substantial Federal involvement is a relative rather than absolute concept. Normally, Federal involvement must go beyond usual stewardship activities to be considered substantial.
- 4. Other types of assistance agreement used by the USFWS are the Wildlife Cooperative Extension Agreement and Challenge Cost Share Agreement.
- C Inter-governmental transfers of funds.
 - 1. INTER AGENCY AGREEMENTS: A procedure by which one Government agency (the requesting agency) obtains supplies or services from or through another (the servicing agency).
 - a. The Economy Act, 31 U.S.C. 1535 authorizes agencies to enter into mutual agreements and obtain supplies and services by interagency acquisition.
 - b. The Act may not be used by an agency to circumvent conditions and limitations imposed on the use of funds. Agencies are forbidden to use interagency acquisition as a means of avoiding the requirement to obtain full and open competition.
 - c. Each Economy Act order shall be supported by a DETERMINATION AND FINDINGS (D&F).
 - 2. INTRA AGENCY AGREEMENTS: A procedure by which one bureau of the Department of the Interior (the requesting bureau) obtains supplies or services from or through another (the servicing bureau).



Flowchart for Grants and Agreements

Intra-Agency Agreements to USDA/BRD by Your Office

Identify Requirem't-----> Prepare ----> Send to CRU Unit----> BRD, Reston ---> You Execute Agmt i.e. Project SOW Agmt & Save to Floppy

& CRU will forward to BRD, Reston, VA

Will sign and return Agmt

to you

and send copy to Reston, VA who will send copy to CRU

--- Admin-----> Your Close Out Including Mods & Paym'ts thru IPAC**

Inter-Agency Agreements

Identify Requirem't----> Sign-----> Prepare -----> Prepare AR-----> CGS finalizes ----->*Execute----> Admin-----> Close Out i.e. Project SOW

Determ'n & Findings

Agmt & Save to Floppy

And fwd to CGS (Whole Pkg)

Agmt & Sends to Recip't

Agmt Including

Mods/Paym'ts thru IPAC**

Challenge Cost-Share Agreements

Identify Requiremt-----> Gain Approval----> Get TIN & ---> Prepare Agmt----> Complete----> Prepare AR------> CGS finalizes* i.e. Project SOW

CCS Committee

ACH Form Completed

Save to Floppy

Worksheet And fwd to CGS (Whole Pkg)

Agmt & Sends to Recip't

Grants and/or Cooperative Agreements

i.e. Newspapers or **Public Posting**

Evaluate, And Select

SF 424 for completeness

including breakdown,

proposal and Assurances

Save to Floppy

completed

Advertise Availability---->Receive Proposal,---->Check over----> Prepare Agmt----> Get DUNS &----->Complete ----->Prepare AR ---->CGS finalizes * ACH Form PO's Questionnaire And fwd to CGS Agmt & Sends & NEPA***Checklist (Whole Pkg to Recip't

including:

Complete SF 424, NEPA Checklist Proposal, Budget, Ouestionnaire. Agmt, Hard Copy & Electronic

Legend: Agmt = Agreement

AR = Acquisition Request ***NEPA = Nat'l Envirom'l Prot'n Agn'y Recip't = Recipient

*Same as all Agmts: execute, admin and close out SF 424 = Application for Assistance

**IPAC = Inter-Governmental Payments & Collections (Only applies to Inter & Intra Agency Agmts) he following is a list of documents that must be included in the package with any request to CGS for the for the processing of any of these types of agreements.

I. GRANTS AND COOPERATIVE AGREEMENTS

Grants and cooperative agreements are to be used when the Service provides financial assistance to another organization or individual to support, stimulate or aid the other party's activities. This financial assistance is usually provided in response to the other party's request which generally is in the form of a written proposal and a Standard Form 424, Application for Federal Assistance. This is an action where the primary benefit accrues to the recipient of the assistance. If the purpose of the transaction is to purchase goods or services for the benefit of the Service then the action is considered to be procurement and must be done under contracting procedures. Here are some other ways that assistance differs from procurement:

<u>Program Objectives</u>: The recipient in grant/cooperative agreement-type defines what it will do to achieve the objectives of the program through submission of a proposal. The recipient is usually responsible for deciding what or how it will do something. In most procurements, on the other hand, the Government assumes responsibility for what it wants or how it wants something done, as clearly and in as detailed a fashion as it can.

Price/Need Factors: Price or estimated cost plays a small role in the selection of the recipient in grant/cooperative agreement-type assistance relationships. Assistance funds are awarded, for example, on geographical or per capita basis for formula; other types of assistance are awarded according to need or capability. The reasons for selection of an assistance recipient are in large part of a reflection or a function of the objectives of the program. Offerors or bidders in procurement actions compete on the basis of price and other factors for a specific award and the regulations require other factors for a specific award and the regulations require that a procurement be awarded to the lowest responsive and responsible bidder. Assistance wards, on the other hand, are often made at the discretion of the granting agency with the knowledge that the recipient needs some form of aid or help in order to complete an objective.

Agency Relationship: In procurement, the basic arms-length buyer-seller relationship is expressed in a formal manner, with the rights and duties of the Government and the performer explicitly detailed. The Government, as a purchaser, exercises its right to control or direct the work through specifications, changes, or inspection and acceptance procedures. The government can terminate for its convenience and, where appropriate, for default. In instances where the contractor does not satisfactorily perform as directed in the specifications or scope of work, the Government can withhold payment until it receives satisfactory performance or delivery.



We strongly recommend that you contact CGS if you need any help in determining the proper type of transaction.

If the action is to be a grant or cooperative agreement we will need to have the following documents included in the package that you send to CGS:

A. ACQUISITION REQUEST - FWS FORM 3-2109

This form provides CGS with the fund certification and all required approvals. A copy of the form is attached.

B. STANDARD FROM 424 - APPLICATION FOR FEDERAL ASSISTANCE

It is a requirement that this form be submitted with any application for federal assistance. The form is designed for use at all stages of the application process. Its first use is by the prospective applicant to notify the Area-wide and State Clearinghouses of the intent to submit an application for Federal assistance. It is also used to submit a complete application for a new program, a change, a continuation or a supplement. The form is then used by Federal agencies to report Federal actions back to the Clearing Houses. Finally, the form serves to provide a standard format by which information on the nature, duration, and funding of the project can be readily cataloged and compiled.

Here are some guidelines on some commonly asked questions regarding the form:

- If the application is for funding that does not involve construction, the SF 424 together with SF 424A (Budget Information - Non-Construction Programs) and SF 424B (Assurances - Non-Construction Programs) must be completed and signed where appropriate by the applicant. The applicant need not fill out SF 424A if it has submitted to the Government a detailed cost breakdown with its proposal.

If the application is for funding that does involve construction, the SF 424 together with the SF 424C (Budget Information - Construction Programs) and SF 424D (Assurances - Construction Programs) must be completed and signed where appropriate by the applicant.

The applicant may leave block 10 of the SF 424 blank if it does not know the appropriate Catalog of Federal Domestic Assistance Number. CGS will complete this information.

- The applicant may leave block 16 of the SF 424 blank if it does not know if the application is subject to review under the state executive order 12372 review process.
- A copy of the complete SF 424 forms package is attached. This document may be duplicated or additional copies may be requested from CGS.



In most cases the SF 424 should be accompanied by a written proposal. The purpose of the proposal is to identify in detail the principal and subordinate objectives of the proposed work and to explain why assistance is needed in order to achieve those objectives. The proposal should also describe the proposed scope of work and identify the benefit to the public in having this work funded by the Government. Many proposals also contain information on the background and qualifications of the individual performing the work. Because CGS is often put in the position of having to explain why the work is assistance as opposed to procurement, it is essential that we have in our files a copy of the proposal. In the event that a proposal was not submitted, the Project Officer should provide a statement to that effect and a justification as to why the work is being funded without having the applicant submit a proposal.

D. DETAILED COST BREAKDOWN

All costs funded under an assistance agreement must be <u>reasonable</u> and <u>allowable</u>. Therefore, in order to ensure that a thorough cost analysis by CGS can be performed prior to award it is essential that we be provided with a detailed budget with a breakdown of all costs proposed by the applicant. In order that no delays are encountered we as that the breakdown be as detailed as possible including identification of individual salaries by position and duration of work, identification of any negotiated indirect cost or fringe benefit rates, identification of any equipment to be purchased, and identification of any travel to be incurred. An example of a well prepared budget is included as an attachment.

E. DRAFT OF AGREEMENT (HARD COPY AND ON DISKETTE)

In order to expedite the processing of the agreement we ask that the Project Officer prepare a draft of the agreement using the format from the attached agreement example. The draft should be prepared in WordPerfect A hard copy of the draft together with a copy of the draft on diskette should be provided to CGS. An example of the agreement in WordPerfect will be provided by CGS upon request on either a diskette or via Lotus Notes (E-Mail).

F. PROJECT OFFICER'S QUESTIONNAIRE

In order that we may have available for our files certain background information concerning the request for assistance we ask that the attached questionnaire be prepared and submitted by the Service Project Officer. A copy of this questionnaire is normally included as an addendum to the agreement example.



Director's Order 127 requires the completion of a NEPA Compliance Checklist for each financial assistance action and inclusion of the checklist in the administrative record for that action. Basically, the checklist documents the decision, by the Service decision maker, that the proposed assistance action complies with a Categorical Exclusion from NEPA or that the preparation of an Environmental Assessment is required in order to comply with NEPA. The checklist is to be prepared and approved prior to project approval and award of funds. The checklist is part of the administrative record for the financial assistance action and as such must be included in any documents undergoing public review and must be made available to the public upon request. The order applies to all new grants, cooperative agreements, or renewals submitted to the Service on or after September 1, 2000. Copies of the checklist may be obtained at http://www.fws.gov/r9pdm/forms/3-2185.pdf

Please be advised that if all of the above information is not submitted with the acquisition request package it will be necessary for CGS to return to the entire package to the Service Project Officer with a request for the missing documents. This will result in delays in getting the project funded so it is very important that all documents be included with your request.

II. INTER- AND INTRA-AGENCY AGREEMENTS

A new format has been developed for these agreements. Please note that a Findings and Determination for Inter-Agency Agreements must be signed by the Service Project Officer and attached to the acquisition request. We have attached examples of the new format for the agreements, however, in the event that you would like to have these documents in WordPerfect format please contact CGS and we will provide them to you on a diskette or via Lotus Notes (E-Mail). Please remember, an Inter-Agency Agreement is to be used when there is an agreement between the Fish and Wildlife Service and another agency of the Federal Government. An Intra-Agency Agreement is to be used when there is an agreement between the Fish and Wildlife Service and another bureau of the Department of the Interior. Since the Service often transfers funds to NBS for work to be performed through one of their units, a separate NBS Intra-Agency Agreement has been developed and is to be used for this purpose. When you send your request in to CGS your package should include the following:

A. INTER-AGENCY AGREEMENTS

A signed acquisition request, FWS Form 3-2109;

A draft of the agreement;

A copy of the draft agreement on diskette in WorkPerfect; and

A findings and Determination statement signed by the Project Officer.

B. INTRA-AGENCY AGREEMENTS

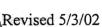
A signed acquisition request, FWS Form 3-2109;

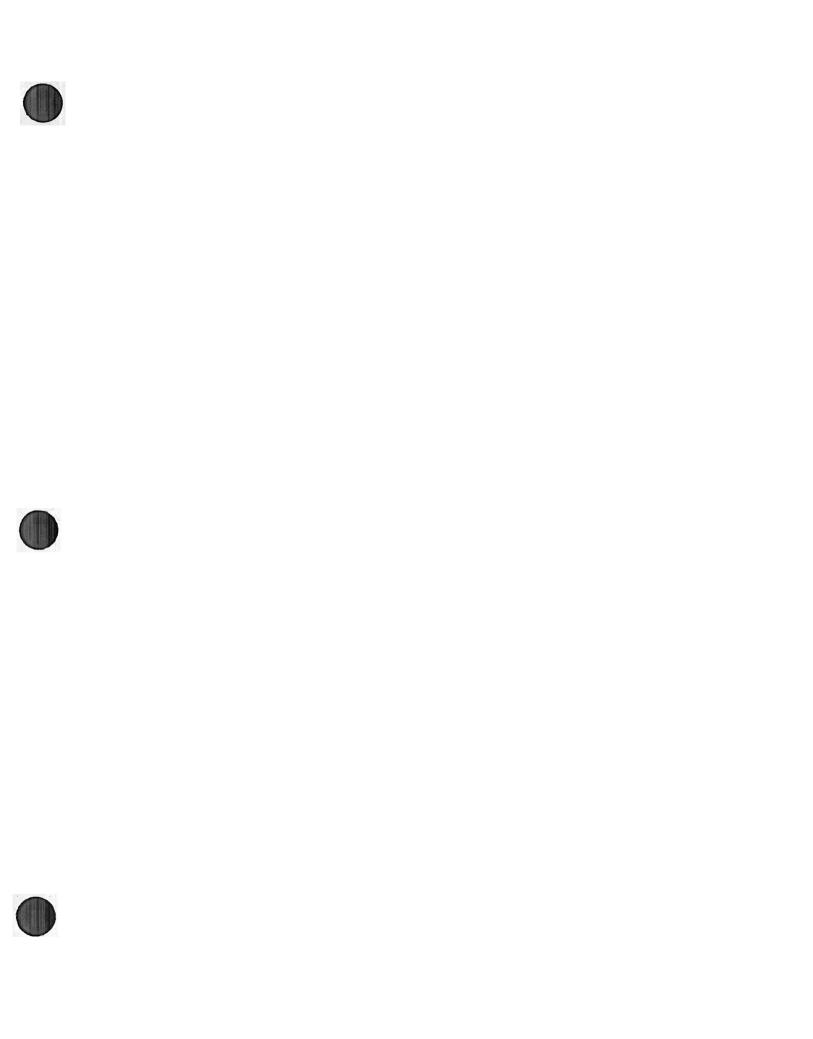
A draft of the agreement; and

A copy of the draft agreement on diskette in WordPerfect.

All requests for any of the above documents or any questions regarding policy or procedure may be directed to Don Calder in CGS at 404/679-4058.

Attachments





PROCUREMENT

A Procurement contract shall be used as the legal instrument reflecting a relationship between the Service and a State, a local government, nonprofit organization or other entity when the principal purpose of the instrument is to acquire (by purchase, lease, or exchange) property or services for the direct benefit or use of the Government. A procurement contract can also be used when other conditions apply such as the Government needs to protect its interests (e.g to ensure performance). Contract actions include sealed bids, request for proposals, simplified acquisitions such as purchase delivery orders, the Government purchase card, or blanket purchase agreements. Only warranted Contracting Officer may award procurement contracts. Also, Contracting Officers are limited to their office or warranted dollar amount authority, whichever is less.

In procurement, the basic arms-length buyer-seller relationship is expressed in a formal manner, with the rights and duties of the Government and the performer explicitly detailed. The Government, as a purchaser, exercises its right to control or direct the work through specifications, changes or inspection and acceptance procedures. The Government assumes responsibility for what it wants or how it wants something done, as clearly and in as detailed a fashion as it can. The Government can terminate for its convenience and, where appropriate, for default. In instances where the contractor does not satisfactorily perform as directed in the specifications or scope of work, the Government can withhold payment until it receives satisfactory performance or delivery.

The cornerstone of procurement is competition. Offerors or bidders in procurement actions compete on the basis of price and other factors for a specific award and the regulations require that a procurement be awarded to the lowest responsive and responsible bidder.

Thresholds:

Less than or equal to \$2,500	Micro-purchase
\$2,501 to \$100,000	
\$100,001 or more	
\$2,501 to \$5,000,000	

Applicable Regulations: Federal Acquisition Regulations (FAR)

Advertising Requirements: \$10,000 - \$25,000......Public Posting
Over \$25,000......FEDBIZOPPS





ASSISTANCE

The Government provides financial assistance to another organization or individual to support, stimulate or aid the other party's activities. This financial assistance is usually provided in response to the other party's request which generally is in the form of a written proposal and a Standard Form 424, Application for Federal Assistance. This is an action where the primary benefit accrues to the recipient of the assistance.

Instruments used:

COOPERATIVE AGREEMENT: Shall be used as the legal instrument when the relationship between the Government and a State, local government, nonprofit organization or other recipient has as its principal purpose the transfer of a thing of value to carry out a public purpose or support stimulation authorized by law; and the program office expects substantial involvement with the recipient when carrying out the activity contemplated in the agreement.

GRANT AGREEMENT: Is the same as a cooperative agreement but there is no program involvement by the Government during the grant other than normal stewardship responsibilities. CGS classifies Wildlife Cooperative Extension Agreements as grants.

Application Process

FWS must have authority to provide the assistance FWS must provide public notice of the availability of the assistance and application procedures.

Applicant must submit to Project Officer.

SF 424 with Assurances Written Proposal Detailed Budget

Project Officer reviews proposal and submits to CGS:

SF 424
Written Proposal
Budget
Project Officer's Questionnaire
Acquisition Request (FWS Form 3-2109) certifying funds w/fiscal year
Draft of agreement (in written and electronic format)
NEPA Checklist (if applicable)

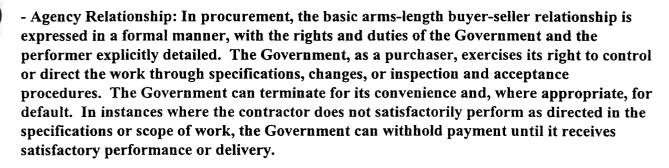
Award Process:

CGS completes the agreement and sends the document together with certifications to recipient for signature. Recipient returns signed copies of agreement and certifications. CGS issues final executed agreement, obligates funds, and submits FAADS report. Copies of the signed agreement are sent to recipient and to the project officer.



If the purpose of the transaction is to purchase goods or services for the benefit of the Government then the action is considered to be PROCUREMENT and must be done under FAR procedures. Here are some other ways that assistance differs from procurement.

- Program Objectives: The recipient in grant/cooperative agreement-type defines what it will do to achieve the objectives of the program through submission of a proposal. The recipient is usually responsible for deciding what or how it will do something. In most procurements, on the other hand, the Government assumes responsibility for what it wants or how it wants something done, as clearly and in as detailed a fashion as it can.
- Price/Need Factors: Price or estimated cost plays a small role in the selection of the recipient in grant/cooperative agreement-type assistance relationships. Assistance funds are awarded, for example, an geographical or per capita basis by formula; other types of assistance are awarded according to need or capability. The reasons for selection of an assistance recipient are in large part of a reflection or a function of the objectives of the program. Offerors or bidders in procurement actions compete on the basis of price and other factors for a specific award and the regulations require that a procurement be awarded to the lowest responsive and responsible bidder. Assistance awards, on the other hand, are often made at the discretion of the granting agency with the knowledge that the recipient needs some form of aid or help in order to complete an objective. The Government derives an indirect benefit from the work. While competition is encouraged, it is not required.



In assistance, however, this type of buyer-purchaser relationship does not exist. The Government's role is that of a patron or partner. The relationship is based on the cooperation of the parties, with responsibilities for assuring performance resting largely with the recipient or shared with the Government. The recipient is only required to put forth a "best level of effort" in ensuring that the objectives of the agreement are met. In addition, the recipient may be advanced funds to use in performance of the work.

Rules and Regulations:

Code of Federal Regulations 43, Part 12, Administrative and Audit Requirements and Cost Principles for Assistance Agreement.





Public Notice Requirements (Methods):

Catalog of Federal Domestic Assistance (CFDA)
Broad Agency Announcements
Professional Journals
Commerce Business Daily
Federal Register

Reporting Requirements:

All assistance obligations must be reported in the Federal Assistance Award Data System (FAADS) via the DI 1961. This is a statutory report under Title 31, U.S.C. Section 6102a. The report shows actions by type of recipient, type of action, dollar amount and type of assistance.

In FY 01 CGS obligated approximately \$10,000,000 in assistance and \$30,000,000 in procurement. However, as a whole the Department of the Interior obligated more assistance than procurement dollars.

Exception to Rules:



"Insofar as implementing projects under the North American Wetlands Conservation Act (NAWCA) and the general rules under the Grant and Cooperative Agreements Act, 31 U.S.C. 6304 et seq., for determining whether to utilize a contract, grant or cooperative agreement, do not apply. A grant or cooperative agreement may be utilized for such projects, rather than a contract, without regard to the direct benefit versus public purpose analysis generally required under the Grant and Cooperative Agreements Act, so long as the proposed project is to be carried out on a cost-sharing basis."

Office of the Solicitor memo of February 23, 1997

